ONG AH CHUAN v. PUBLIC PROSECUTOR KOH CHAI CHENG v. PUBLIC PROSECUTOR

[P.C. (Lord Diplock, Lord Keith of Kinkel, Lord Scarman & Lord Roskill) July 21-23 & October 15, 1980]

[Privy Council Appeal Nos. 37 & 38 of 1979]

Misuse of drugs — Trafficking in heroin — Possession of heroin exceeding 15 grammes — Presumption of trafficking in controlled drugs — Rebuttable by accused — Mandatory sentence of death — Whether provision inconsistent with Constitution and void — Constitution of Singapore, arts. 4, 9(1) & 12(1) — Misuse of Drugs Act, 1973, ss. 2, 3, 6, 10, 15, 16, 19, 29 & second Schedule.

Constitutional Law — Fundamental Liberties — Presumption of innocence — Equality before the law — Whether statutory presumption under section 15 of Misuse of Drugs Act, 1973 inconsistent with Constitution — Whether mandatory sentence of death is contrary to Constitution — Misuse of Drugs Act, 1973 — Constitution of Singapore, arts. 4, 9(1) & 12(1).

Interpretation of Statutes — Maxim noscitur a sociis — Meaning of "transport" — Misuse of Drugs Act, 1973, s. 2.

In these cases the appellants appealed against their convictions for offences of trafficking in heroin contrary to section 3 of the Misuse of Drugs Act, 1973. The evidence against the appellants showed that they were in each case arrested in possession of the heroin which exceeded 15 grammes and that they were transporting the heroin. As the amount of heroin involved exceeded 15 grammes in each case the mandatory sentence of death was imposed on the appellants. The appellants appealed to the Court of Criminal Appeal, which dismissed the appeal, following its earlier decision in *Wong Kee Chin* v. *Public Prosecutor*[5] on the true construction of the Control of Drugs Act, 1973. At the appeal before the Privy Council two additional grounds were raised on the constitutionality of the provisions in the Act. The first was that the provision in section 15 of the Act that proof of possession of controlled drugs in excess of the minimum quantities stated in the section gives rise to a rebuttable presumption that such possession is for the purpose of trafficking is inconsistent with the Constitution; and the second was that the provision in section 29 and the Second Schedule of the Act for a mandatory death penalty for trafficking in controlled drugs in excess of the higher minimum quantities stated in the schedule, is likewise inconsistent with the Constitution.

Held: (1) the presumption under the Misuse of Drugs Act, 1973 works as follows, when an accused is proved to have had controlled drugs in his possession and to have been moving them from one place to another (a) the mere act of moving them does not of itself amount to trafficking within the meaning of the definition in section 2 of the Act; but if the purpose for which they are being moved was to transfer possession from the mover to some other person at their intended destination the mover is guilty of the offence of trafficking under section 3 of the Act, whether that purpose was achieved or not; (b) if the quantity of controlled drugs being moved was in excess of the minimum quantity specified for that drug in section 15 of the Act, that section creates a rebuttable presumption that such is the purpose for which they were being moved, and the onus lies upon the mover to satisfy the court, upon the balance of probabilities, that he had not intended to part with the possession of the drugs to anyone else, but to retain them solely for his own consumption;

(2) the Court of Criminal Appeal had in these cases applied the correct construction to the Misuse of Drugs Act, 1973 and the appeals on this ground must fail;

(3) in a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such contexts as "in accordance with law", "equality before the law", "protection of the law" and the like, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which affords "protection" for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by Article 5) of Articles 9(1) and 12(1) would be little better than a mockery;

(4) in the case of the Control of Drugs Act, 1973, any act done by the accused, which raises the presumption that it was done for the purpose of trafficking, is *per se* unlawful, for it involves unauthorised possession of a controlled drug which is an offence under section 6 of the Act. There is no conflict with any fundamental rule of natural justice and so no constitutional objection to a statutory presumption (provided that it was rebuttable by the accused) that his possession of controlled drugs in any measurable quantity without regard to specified minima was for the purpose of trafficking in them. There is therefore no substance in the suggestion that section 15 of the Act is inconsistent with the Constitution, at any rate so far as it relates to proved possession, with which the cases under appeal were concerned;

(5) there is nothing unconstitutional in the provision for a mandatory death penalty for trafficking in significant quantities of heroin and morphine. The dissimilarity in circumstances adopted as justifying the differentiation in punishment was not purely arbitrary but bore a reasonable relation to the social object of the law and there is therefore no inconsistency with Article 12(1) of the Constitution.

Cases referred to:-

(1) *Seow Koon Guan* v. *Public Prosecutor* [1978] 2 M.L.J. 45.

(2) *R.* v. *McDonald* (1963) 43 W.W.R. 337, 342.

(3) *R.* v. *McMyn* [1941] 4 D.L.R. 268.

(4) *Public Prosecutor* v. *Teh Sin Teong* (Singapore — Criminal Case No. 28 of 1976, unreported).

(5) *Wong Kee Chin* v. *Public Prosecutor* [1979] 1 M.L.J. 157.

(6) *Poon Soh Har* v. *Public Prosecutor* [1977] 2 M.L.J. 126.

(7) *R.* v. *Greene* (1977) 74 D.L.R. (3d) 354.

(8) *Minister of Home Affairs & Anor.* v. *Fisher & Anor.* [1980] A.C. 319, 329.

HIGH COURT.

Loke Yoon Kee (Deputy Public Prosecutor) for the prosecution.

Loh Lin Kok for the defence.

Cur. Adv. Vult.

Choor Singh & Rajah JJ.: The accused was charged and tried before us on the following charge:

"That you, Ong Ah Chuan, on or about the 2nd day of June 1977 at about 12.00 noon in front of No. 270, Bukit Timah Road, Singapore, did traffic in a controlled drug specified in Class 'A' of Part I of the First Schedule to the Misuse of Drugs Act, 1973 (No. 5 of 1973) to wit, 209.84 grams of diamorphine without any authorisation under the said Act or the regulations made thereunder and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act, 1973 (No. 5 of 1973) and punishable under section 29 of the said Act."

On June 2, 1977 at about 9.15 a.m., acting on information received, Acting Senior Narcotics Officer Yeo Kiah Hee (PW6) and Assistant Narcotics Officer Ramli arrived on their motor-cycle at Block 26 Marsiling Drive, Singapore. They stationed themselves on the ground floor of Block 30 Marsiling Drive and commenced observation on the flat of the accused, No. 235-E Block 26 Marsiling Drive.

At about 9.30 a.m., Yeo (PW6) saw a motor car No. SX 9098, driven by the accused, arriving at Block

26. The accused parked the car in a lane next to Block 26. He then got out of the car, locked it, and walked towards the lift and staircase landing of the ground floor of Block 26. A few seconds later, the accused was seen by the two officers walking along the corridor of the 5th floor of Block 26 towards his flat and entering it. Yeo (PW6) and Ramli continued to keep observation on the flat.

About an hour later Acting Senior Narcotics Officer, Teo Ho Peng (PW7) and Assistant Narcotics Officer Chua Swah Hai arrived at Block 20 on their motor-cycle. On their arrival they noticed that SX 9098 had been parked in the lane adjacent to Block 26. They signalled their arrival to Yeo (PW6) and Ramli and they too proceeded to keep observation on the accused's flat and motor car SX 9098 from the ground floor of Block 28.

At about 11.25 a.m. the accused was seen leaving his flat alone and walking along the corridor towards the lift and staircase landing. As he entered the staircase landing, he was out of sight of the officers for a few seconds. He was then seen coming out of the staircase landing on the ground floor of Block 26 carrying a plastic bag in his right hand. The accused walked towards car SX 9098. On reaching it he unlocked the front passenger door, placed the plastic bag in the car, closed the door, walked towards the driver's door, unlocked it and got into the driver's seat. He started the car and drove it in the direction of Admiralty Road. The four narcotics officers began to trail the accused's car on their two motor-cycles. The accused proceeded towards the city along Admiralty Road and thence into and along Woodlands Road. At Bukit Panjang Circus, the accused drove into Upper Bukit Timah Road towards Ewart Circus. At Ewart Circus, the car proceeded into Jalan Anak Bukit and thence to Bukit Timah Circus. At Bukit Timah Circus the accused drove into and along Dunearn Road towards Newton Circus. At Newton Circus the car turned left into Bukit Timah Road and stopped in front of No. 270 Bukit Timah Road. Throughout the whole journey which had taken a little over half-an-hour the officers did not lose sight of the accused's car. By this time the four officers, Teo (PW7), Chua, Yeo (PW6) and Ramli, who were close on his tail had also turned left into Bukit Timah Road and stopped their motor-cycles some 10 yards or so behind car SX 9098. The accused alighted from the car, locked it and walked away from it in the direction of the officers. By this time, Yeo (PW6), who had been riding pillion, got off the motor-cycle and proceeded towards the accused. Chua, who had also been riding pillion on the other motor-cycle, joined him. Yeo (PW6) approached the accused and after identifying himself as a Government man, detained him. He then seized a bunch of keys from the accused's hand and proceeded to search him. From the accused's waist front trousers pocket he recovered a plastic bag containing light brownish powder, which he suspected to be Diamorphine Hydrochloride. Thereupon he immediately placed the accused under arrest and instructed Chua to handcuff him. The accused was escorted to motor car SX 9098 by Chua and Yeo (PW6) and from in between the front seats of the car Yeo (PW6) seized a plastic bag, inside which there was another plastic bag containing some clothing and a parcel wrapped in a Chinese newspaper. Yeo (PW6) unwrapped the parcel in the presence of the accused and found yet another plastic bag which contained brownish granular solids which he suspected to be Diamorphine Hydrochloride. The said light brownish powder and the said brownish granular solids were sent to the Department of Scientific Services where Mr. Lim Han Yong, the Government Chemist, analysed the said light brownish powder and the said brownish granular solids and found the diamorphine content of each of them to be 3.84 grams and 206.0 grams respectively.

At the close of the prosecution case counsel for the accused submitted that the accused on the evidence before the court had no case to meet on the charge as framed. He submitted that as the accused was merely carrying the diamorphine and as there was no evidence of its being delivered to anyone the accused was not trafficking within the meaning of the Misuse of Drugs Act 1973. In support of his proposition he cited the case of *Seow Koon Guan* v. *Public Prosecutor*[1] (the *Seow* case) and two Canadian cases namely, (1) *Regina* v. *McDonald* and *Regina* v. *Harrington & Scosky*[2] (the Canadian Drug case) and (2) *Rex* v. *McMyn*[3] (the Canadian Potatoes case).

In our view the *Seow* case did not help the accused. There the accused was charged with being in possession of 55.48 grammes of diamorphine for the purpose of trafficking in a controlled drug and thereby committing an offence under section 3(c) of the Act. The Court of Appeal ruled that although possession *per se* of a controlled drug constituted an offence under section 6(a) of the Act, a person in possession of such a drug can be charged with and found guilty of an offence under section 3(c) of the Act only if it is proved that he did or offered to do any act preparatory to or for the purpose of trafficking therein. The facts in the instant case are that the accused transported in a car heroin from Woodlands to 270 Bukit Timah Road. The decision in *Seow's* case was therefore inapplicable.

The headnote to the Canadian Drug case reads as follows:

"Mere possession of one-quarter ounce of pure heroin, with no other attendant circumstances, held, not to justify an inference of trafficking.

Transporting drugs for mere personal purposes or use, as distinct from transporting for other purposes, does not of itself afford sufficient evidence of the offence of trafficking. 'Transport' in the definition of 'traffic' in section 2(i) of the Narcotic Control Act, Can. 1960-61, Ch. 35 is not meant in the sense of mere conveying or carrying or moving from one place to another, but in the sense of doing so to promote the distribution of the narcotic to another."

The facts in the Canadian Drug case were as follows:

"Harrington, followed soon after by Scosky, was seen to enter the washroom of a service station in which was secreted a cache (No. 31) estimated to contain one-quarter ounce of pure heroin wrapped in a particular Vancouver newspaper of recent date. The appellants remained in the washroom for a short period, then emerged and left the service station premises together in a motor car which, for some time thereafter, was kept under observation by the occupants of a police car. An immediate search of the washroom showed that the drug cache was missing.

Later, one of the pursuing police officers picked up pages of a newspaper identified as of the same dates as the wrapping on the drug package, which was seen to be ejected from the car occupied by the appellants.

It was shown that one-quarter ounce of pure heroin when mixed with lactose and placed in gelatin capsules, would make up not less than 100 capsules, such as are commonly used by drug addicts. Both appellants were shown to have been addicted to the use of drugs."

It is to be noted that in this Canadian case the decision was based on the provisions of the Narcotic Control Act, Canada 1960-61 Chapter 35 which provisions do not find a place in our Act. For this reason, if not for any other, we were of the view that this case had no relevance in the construing of our Act. It is further to be noted that no heroin was found on or in the possession of any of the two accused nor was there any evidence that they had transported heroin. Therefore we rejected this case as not pertinent to the instant case. Here we would like to refer to our judgment in the case of *Public Prosecutor* v. *Teh Sin Tong*[4] where we convicted the accused under section 3(a) of the Act of having transported heroin from Johore Bahru to the Woodland Custom's Checkpoint, Singapore. The conviction has been upheld by both the Court of Criminal Appeal and the Privy Council and our reasons for so convicting have not been disturbed.

The Canadian Potatoes case relates to the violation of an Order of the B.C. Coast Vegetable Marketing Board. The Order that was being violated is not set out in the reported case. We are therefore unable to say how this case can be of any assistance in determining what the word 'transport' should be construed to mean in the context of our Act.

We rejected counsel's submission and as the prosecution had made out a case against the accused which, if unrebutted, would warrant his conviction, we called on him to make his defence.

In his defence the accused said that on June 2, 1977 at 11.25 a.m. he left his flat 235E, Block 26 Marsiling Drive in his car SX 9098 to meet his friend Ah Hoe at about 12 noon at No. 270 Bukit Timah Road from where they were to go to Pulau Ubin to obtain employment for themselves with the help of his father-in-law who was working on the island. He took with him in his car, which he was driving, some clothing and some "white powder" (Peh Hoon). He had no intention of delivering the "white powder" to anyone. All the "white powder" he took was for his personal consumption and the reason for his taking with him such a large quantity was that it would have been difficult for him to come out of Pulau Ubin every now and then to obtain his supply of the powder. He said that he had bought the large quantity of "white powder" for $2000 a few days before his arrest as it was cheaper to buy it in bulk. The accused did not call any witness on his behalf.

Counsel for accused submitted as a matter of law that for the accused to be found guilty of trafficking as charged the prosecution had to show that the accused transported the heroin for the purpose of delivering or sale. He relied on the cases he had cited to us previously. We rejected his submission as not valid to the instant case.

The accused's defence depended entirely on his credibility. Apart from his word, there was no evidence that he was a drug addict; that he had a father-in-law at Pulau Ubin; that he was on his way to Pulau Ubin when arrested and that he was taking the large quantity of heroin found in his possession to Pulau Ubin for his own consumption. The accused did not impress us as a truthful witness. In our judgment the accused was not speaking the truth and had invented his story to escape the consequences of his criminal act. We therefore rejected his defence.

After considering all the evidence before us we found that (1) the accused had on June 2, 1977 between the hours of 10.25 a.m. and 12 noon transported 209.84 grams of diamorphine without authorisation, (2) the said heroin which he had so transported was not for his personal consumption and (3) he was guilty of the offence of trafficking as charged.

We accordingly convicted the accused and passed the mandatory sentence of death on him.

From the above decision the accused appealed to the Court of Criminal Appeal (Wee Chong Jin C.J., Kulasekaram and Chua JJ.).

COURT OF CRIMINAL APPEAL.

Loh Lin Kok for the appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering oral judgment of the Court): The appellant, Ong Ah Chuan, was found guilty of unlawfully trafficking in 209.84 grams of diamorphine in contravention of section 3(a) of the Misuse of Drugs Act, 1973 and sentenced to death.

We do not need to set out the facts found by the trial judges as they are not now in dispute. In his defence he admitted possession of the diamorphine found on him and in the car he was driving but he said that he was taking it for his own consumption at Pulau Ubin, an offshore island, where he was going to find employment. The trial judges did not believe his evidence and found that he had invented his story of going to Pulau Ubin with the diamorphine for his own consumption, having bought such a large quantity as it was cheaper to buy it in bulk. They found he had not transported this diamorphine for his own consumption and accordingly found him guilty of unlawful trafficking.

In the case of *Wong Kee Chin* v. *Public Prosecutor*[5] this court said: —

"When it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under section 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under section 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction. In those circumstances the burden of proof would clearly shift to the accused and he would have to rebut the case made out against him."

Accordingly, it having been proved that the appellant had transported the diamorphine found on

him in the car he was driving and the presumption under section 15 of the Act that he had possession of the diamorphine for the purpose of trafficking not having been rebutted, the appeal must, in our judgment, be dismissed.

From the above judgment the appellant appealed to the Judicial Committee of the Privy Council.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

A.P. Lester Q.C. (*Alan Newman* and *David Pannick* with him) for the appellant in Privy Council Appeal No. 37 of 1979.

Mervyn Heald Q.C. (*G. Newman* with him) for the appellant in Privy Council Appeal No. 38 of 1979.

S.C. Silkin Q.C. M.P. (*S. McKinnon Q.C.* and *B. Bhalla* with him) for the respondent.

Cur. Adv. Vult.

Lord Diplock (delivering the judgment of the Board): These two appeals are against convictions for offences of trafficking in heroin contrary to section 3 of the Misuse of Drugs Act, 1973. As the amount of heroin involved exceeded 15 grammes in each case sentence of death was imposed on both appellants. Sentence of death is mandatory under section 29 of that Act and the revised Second Schedule to it that was substituted for the original Second Schedule by section 13 of the Misuse of Drugs (Amendment) Act, 1975. Their Lordships will call the 1973 Act, as so amended, "The Drugs Act". The appeals are also against the imposition of the death sentence, upon the ground that the statutory provision under which it was imposed is inconsistent with the Constitution and accordingly is void under Article 4.

It is not necessary for the purpose of dealing with the only matters argued before their Lordships to state the facts in either of the two cases in more than the barest outline. They are set out in detail in the grounds of judgment of the High Court judges by whom the appellants respectively were tried.

Ong Ah Chuan was observed by two narcotics officers to leave his flat carrying a plastic bag which he put into his car which was parked nearby. He got into the car and droved some twenty miles to a spot in Bukit Timah Road where he stopped the car, alighted and locked the car behind him. He was arrested by the narcotics officers who had followed him throughout his journey. He was searched and the car was searched in his presence. There was found a plastic packet on his person containing impure heroin which on analysis was proved to contain 3.84 grammes of diamorphine, and in the plastic bag which he had been seen to put into the car, impure heroin was found with what was proved to be a content of 206.0 grammes of diamorphine. His explanation that he was carrying it for his own consumption only and the reasons that he gave why it was necessary for him to transport so large a quantity from his own dwelling to another place were unsupported by any corroborative testimony, defied credulity and were disbelieved by the trial judges.

Koh Chai Cheng had brought into Singapore from Malaysia a quantity of heroin for which an acquaintance, who was in fact a police informer, had pretended to him that a buyer had been found at a price of $20,000. The heroin was hidden in a concealed compartment at the back of the boot of his car and was found there when he was arrested as he got into it to drive away from a parking place where he had parked it for his meeting with the police informer. In the concealed compartment there were eleven packets of impure heroin with a total content of 1,256 grammes of diamorphine. His denial of all knowledge of it and his explanation that it must have been planted there by the police informers after his arrival in Singapore were disbelieved by the trial judges who gave cogent reasons for their disbelief.

From their convictions each appellant appealed to the Court of Criminal Appeal. Of the various grounds of appeal that were advanced in that court only one has survived to be relied upon at the hearing before this Board. It is a point of law that turns upon the true construction of the Drugs Act. In the Court of Criminal Appeal no attack was launched upon the constitutionality of any of the provisions of the Drugs Act; but leave was sought to raise before this Board two fresh contentions: the first was that the provision in section 15 of the Drugs Act, that proof of possession of controlled drugs in excess of the minimum quantities stated in the section gives rise to a rebuttable presumption that such possession is for the purpose of trafficking, is inconsistent with the Constitution; and the second was that the provision in section 29 and the Second Schedule for a mandatory death penalty for trafficking in controlled drugs in excess of the higher minimum quantities stated in that Schedule, is likewise inconsistent with the Constitution.

It is only most exceptionally that their Lordships would permit a question of the constitutionality of an Act of the Singapore Parliament to be raised for the first time in the course of the hearing of an appeal by their Lordships' Board. Such a question is eminently one on which their Lordships would wish to have the benefit of the opinions of members of the judiciary of Singapore who are resident in the Republic and more familiar than their Lordships with local conditions there. But these are capital cases and their Lordships would be reluctant to dispose finally of the appeals so long as any plausible argument against the convictions or sentences remained unheard, even though the argument was not thought of until the eleventh hour. Nevertheless, if at the close of the arguments on either of these constitutional points their Lordships had entertained any doubt as to the validity of provisions of the Drugs Act that relate to the convictions of the appellants, they would, before arriving at their judgment, have remitted the cases to the Court of Criminal Appeal to hear argument on the constitutional points and to express their opinion on them for the benefit of this Board. However, as will appear, their Lordships have no such doubts; so this course is unnecessary.

Their Lordships will deal first with the question of construction of the Drugs Act that was argued before the Court of Criminal Appeal. In each of the instant cases that court followed its previous ruling on the same question in *Wong Kee Chin* v. *Public*

Prosecutor,[5] so the instant appeals are, in effect, appeals against that ruling. In *Wong Kee Chin* and in the instant appeals before this Board the appellants prayed in aid certain decisions of Canadian Courts under the Canadian Narcotic Control Act, 1960-61. While the Canadian Act contains a definition of "trafficking" that is virtually identical with the definition in the Drugs Act, the structure of the Acts is quite different. In particular, the Canadian Act creates a specific offence of having drugs in one's possession for the purpose of trafficking, but it contains no provisions corresponding to those contained in sections 10 and 3(c) of the Drugs Act. This makes it helpful to set out rather more extensively than would otherwise be necessary provisions of the Drugs Act to which reference will be made.

"2. In this Act, unless the context otherwise requires —

....

'controlled drug' means any substance or product which is for the time being specified in Part I, II or III of the First Schedule to this Act or anything that contains any such substance or product;

....

'traffic' means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a) above, otherwise than under the authority of this Act or the regulations made thereunder; and 'trafficking' has a corresponding meaning.

3. Except as authorized by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not such other person is in Singapore to —

(a) traffic in a controlled drug;

(b) offer to traffic in a controlled drug; or

(c) do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

6. Except as authorized by this Act or the regulations made thereunder, it shall be an offence for a person to —

(a) have in his possession a controlled drug; or

(b) smoke, administer to himself or otherwise consume a controlled drug.

10. Any person who abets the commission of or who attempts to commit or does any act preparatory to or in furtherance of the commission of any offence under this Act shall be guilty of such offence and shall be liable on conviction to the punishment provided for such offence.

15. Any person who is proved or presumed to have had in his possession more than —

(a) ....

(b) ....

(c) 2 grammes of diamorphine (heroin) contained in any controlled drug; or

(d) ....

shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein.

16.—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

(b) the keys of anything containing a controlled drug;

(c) the keys of any place or premises or any part thereof in which a controlled drug is found; or

(d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had such drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of such drug.

19. If any controlled drug is found in any vehicle it shall, until the contrary is proved, be presumed to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being."

The exceptions in the offence-creating sections 3 and 6 for things done that are "authorised by this Act or the regulations made thereunder" refer to those provisions of the Act which provide for a scheme for compulsory treatment in approved institutions and rehabilitation of drug addicts and contain what is the other part of a two-pronged attack upon the drug problem in Singapore. But no question of authorised dealings in drugs arises in either of these appeals.

The Drugs Act, unlike its Canadian counterpart, does not create *eo nomine* an offence of having a controlled drug in one's possession for the purpose of trafficking therein. If nothing more is proved against an accused than the mere fact that he had the controlled drug in his possession, then an offence under section 6 is established but the graver offence under section 3 of trafficking is not, however large may be the quantity of the controlled drug involved. The Court of Criminal Appeal so held in *Poon Soh Har* v. *Public Prosecutor*[6] and *Seow Koon Guan* v. *Public Prosecutor*.[1] This holding, in their Lordships' view, was clearly right.

To "traffic" in a controlled drug so as to constitute the offence of trafficking under section 3 involves something more than passive possession or self-administration of the drug; it involves doing or offering to do an overt act of one or other of the kinds specified in paragraph (a) of the definition of "traffic" and "trafficking" in section 2. Even apart from any statutory definition, the ordinary meaning of the verb "to traffic", in the particular context of trafficking in goods of any kind, imports the existence, either in fact or in contemplation, of at least two parties: a supplier and a person to whom the goods are to be supplied. This concept, involving transfer of possession, is reflected in the statutory definition itself. Of the seven verbs used to describe the various kinds of overt acts which constitute trafficking "transport" is sandwiched between "sell, give, administer" which precede it and "send, deliver or distribute" which follow it. All of these other verbs refer to various ways in which a supplier or distributor, who has drugs in his possession, may transfer possession of them to some other person. "Transport", although it must involve possession of the drugs by the person who transports them, is the only member of the heptad of verbs that is not inconsistent with the retention of possession of the drugs by him after their transport. It must mean moving the drugs from one place to another; it may mean moving them also to another person but it need not do so. Whether it bears the wider or the narrower meaning depends upon the context in which the verb appears. In their Lordships' view the immediate context of the verb "transport", to which attention has been drawn, attracts the maxim *noscitur a sociis*. This, and the fact that it appears in the definition of the

verb to "traffic", of which the natural meaning in the context of trafficking in goods involves dealings between two parties at least, and that the evident purpose of the Act is to distinguish between dealers in drugs and the unfortunate addicts who are their victims, all combine to make it clear that "transport" is not used in the sense of mere conveying or carrying or moving from one place to another but in the sense of doing so to promote the distribution of the drug to another. Supplying or distributing addictive drugs to others is the evil against which section 3 with its draconian penalties is directed.

The Court of Appeal of British Columbia in *R.* v. *McDonald*,[2] at page 342, interpreted "transport" in the virtually identical definition of "traffic" in the Canadian Narcotic Control Act, 1960-61, as bearing this restricted meaning and the same interpretation was adopted by the Court of Appeal of Newfoundland in *R.* v. *Greene*.[7] Acceptance of it is implicit in the *ratio decidendi* of the Court of Criminal Appeal of Singapore in *Wong Kee Chin* (*ubi sup.*).

So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorised by the Act or Regulations, involves an offence of having the drug in one's possession under section 6 but does not amount to the offence of trafficking under section 3. It is otherwise, however, if the transporter's purpose, whether it is achieved or not, is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of section 10 of the Drugs Act and section 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves that purpose irrelevant to his guilt of the offence of trafficking under section 3; since they provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under section 29 and the Second Schedule.

This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of sections 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.

Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, *in the absence of any plausible explanation by him*, be irresistible — even if there were no statutory presumption such as is contained in section 15 of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. All that section 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the statutory presumption under section 15. In the instant cases, however, the quantities involved were respectively one hundred times and six hundred times the statutory minimum.

Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place to another and, if he can satisfy the court, upon the balance of probabilities only, that they were destined for his own consumption he is entitled to be acquitted of the offence of trafficking under section 3.

So the presumption works as follows, when an accused is proved to have had controlled drugs in his possession and to have been moving them from one place to another:

(1) the mere act of moving them does not of itself amount to trafficking within the meaning of the definition in section 2; but if the purpose for which they were being moved was to transfer possession from the mover to some other person at their intended destination the mover is guilty of the offence of trafficking under section 3, whether that purpose was achieved or not. This is the effect of the provisions of section 3(c) and section 10.

(2) If the quantity of controlled drugs being moved was in excess of the minimum specified for that drug in section 15, that section creates a rebuttable presumption that such was the purpose for which they were being moved, and the onus lies upon the mover to satisfy the court, upon the balance of probabilities, that he had not intended to part with possession of the drugs to anyone else, but to retain them solely for his own consumption.

So, in their Lordships' view, the effect of the Drugs Act was stated with clarity and accuracy in the following passage of the judgment of the Court of Criminal Appeal in *Wong Kee Chin* v. *Public Prosecutor* (at page 161). The reference in this passage to the dictionary sense of the term transporting is to be understood as a reference to its meaning as conveying from one point to another.

"When it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under section 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under section 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction. In those circumstances the burden of proof would clearly shift to the accused and he would have to rebut the case made out against him. The rebuttal will depend upon the evidence placed before the court. If he can convince the trial court by a preponderance of evidence or on the balance of probabilities that the drug was for his own consumption he would be entitled to an acquittal. Factors such as the type of 'transporting', the quantity involved, whether or not the accused is an addict, would be relevant. It would be a question of evidence and the inferences to be drawn from the totality of the evidence before the court."

The appeals so far as they are based on the construction of the Drugs Act must therefore fail.

Their Lordships now turn to the eleventh hour attack by the appellants on the constitutional validity of the presumption for which section 15 provides. Although sections 15 to 19 inclusive of the Drugs Act create a series of rebuttable presumptions that upon proof of the existence of certain facts the existence of other facts shall be treated as established, unless the contrary is proved, in the instant cases their Lordships are concerned only with the presumption under section 15 that arises from *proved* possession; there was no need for the prosecution to rely on any *presumed* possession for which sections 16 and 19 provide.

The appellants' argument may be stated shortly. This statutory presumption, it is said, is in conflict with what their counsel termed the "presumption of innocence"; this is a fundamental human right protected by the Constitution and cannot be limited or diminished by any Act of Parliament which has not been passed by the majority of votes necessary under Article 5 for an amendment to the Constitution. The "presumption of innocence", it is contended, although nowhere expressly referred to in the Constitution, is imported into it by Article 9(1) which provides

"9(1) No person shall be deprived of his life or personal liberty save in accordance with law."

and by Article 12(1) which provides

"12(1) All persons are equal before the law and entitled to the equal protection of the law."

These Articles are among eight Articles in Part IV of the Constitution under the heading "Fundamental Liberties". The eight Articles are identical with similar provisions in the Constitution of Malaysia, but differ considerably in their language from and are much less compendious and detailed than those to be found in Part III of the Constitution of India under the heading "Fundamental Rights". They differ even more widely from those amendments to the Constitution of the United States of America which are often referred to as its Bill of Rights. In view of these differences their Lordships are of opinion that decisions of Indian Courts on Part III of the Indian Constitution should be approached with caution as guides to the interpretation of individual articles in Part IV of the Singapore Constitution; and that decisions of the Supreme Court of the United States on that country's Bill of Rights, whose phraseology is now nearly two hundred years old, are of little help in construing provisions of the Constitution of Singapore or other modern Commonwealth constitutions which follow broadly the Westminster model.

This said, however, their Lordships would repeat what this Board has said on many previous occasions and most recently through Lord Wilberforce in *Minister of Home Affairs & Anor.* v. *Fisher & Anor.*[8] at page 329: that the way to interpret a constitution on the Westminster model is to treat it not as if it were an Act of Parliament but "as *sui generis*, calling for principles of interpretation of its own, suitable to its character ... without necessary acceptance of all the presumptions that are relevant to legislation of private law". As in that case, which concerned fundamental rights and freedoms of the individual guaranteed by the Bermuda Constitution, their Lordships would give to Part IV of the Singapore Constitution "a generous interpretation, avoiding what has been called 'the austerity of tabulated legalism', suitable to give to individuals the full measure of the [fundamental liberties] referred to".

Accordingly their Lordships are unable to accept the narrow view of the effect of Articles 9(1) and 12(1) for which counsel for the Public Prosecutor contended. This was that since "written law" is defined in Article 2(1) to mean "this Constitution and all Acts and Ordinances and subsidiary legislation for the time being in force in Singapore" and "law" is defined as including "written law", the requirements of the Constitution are satisfied if the deprivation of life or liberty complained of has been carried out in accordance with provision contained in any Act passed by the Parliament of Singapore, however arbitrary or contrary to fundamental rules of natural justice the provisions of such Act may be. To the full breadth of this contention one limitation only was conceded: the arbitrariness, the disregard of fundamental rules of natural justice for which the Act provides must be of general application to all citizens of Singapore so as to avoid falling foul of the anti-discriminatory provisions of Article 12(1).

Even on the most literalist approach to the construction of the Constitution this argument in their Lordships' view involves the logical fallacy of *petitio principii*. The definition of "written law" includes provisions of Acts passed by the Parliament of Singapore only to the extent that they are "for the time being *in force* in Singapore"; and Article 4 provides that "any law enacted by the Legislature after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". So the use of the expression "law" in Articles 9(1) and 12(1) does not, in the event of challenge, relieve the court of its duty to determine

whether the provisions of an Act of Parliament passed after September 16, 1963 and relied upon to justify depriving a person of his life or liberty are inconsistent with the Constitution and consequently void.

In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such contexts as "in accordance with law", "equality before the law", "protection of the law" and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which affords "protection" for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by Article 5) of Articles 9(1) and 12(1) would be little better than a mockery.

One of the fundamental rules of natural justice in the field of criminal law is that a person should not be punished for an offence unless it has been established to the satisfaction of an independent and unbiased tribunal that he committed it. This involves the tribunal's being satisfied that all the physical and mental elements of the offence with which he is charged, conduct and state of mind as well where that is relevant, were present on the part of the accused. To describe this fundamental rule as the "presumption of innocence" may, however, be misleading to those familiar only with English criminal procedure. Observance of the rule does not call for the perpetuation in Singapore of technical rules of evidence and permitted modes of proof of facts precisely as they stood at the date of the commencement of the Constitution. These are largely a legacy of the role played by juries in the administration of criminal justice in England as it developed over the centuries. Some of them may be inappropriate to the conduct of criminal trials in Singapore. What fundamental rules of natural justice do require is that there should be material before the court that is logically probative of facts sufficient to constitute the offence with which the accused is charged.

In a crime of specific intent where the difference between it and some lesser offence is the particular purpose with which an act, in itself unlawful, was done, in their Lordships' view it borders on the fanciful to suggest that a law offends against some fundamental rule of natural justice because it provides that upon the prosecution's proving that certain acts consistent with that purpose and in themselves unlawful were done by the accused, the court shall infer that they were in fact done for that purpose unless there is evidence adduced which on the balance of probabilities suffices to displace the inference. The purpose with which he did an act is peculiarly within the knowledge of the accused. There is nothing unfair in requiring him to satisfy the court that he did the acts for some less heinous purpose if such be the fact. Presumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs, explosives, arms and ammunition.

In the case of the Drugs Act any act done by the accused, which raises the presumption that it was done for the purpose of trafficking, is *per se* unlawful, for it involves unauthorised possession of a controlled drug, which is an offence under section 6. No wholly innocent explanation of the purpose for which the drug was being transported is possible. Their Lordships would see no conflict with any fundamental rule of natural justice and so no constitutional objection to a statutory presumption (provided that it was rebuttable by the accused), that his possession of controlled drugs in any measurable quantity, without regard to specified minima, was for the purpose of trafficking in them. The Canadian Narcotic Control Act, 1960-61, so provides by section 10. In contrast to this the Drugs Act only raises the rebuttable presumption when the quantity of drugs in the possession of the accused exceeds the appropriate minimum specified in section 15. It is not disputed that these minimum quantities are many times greater than the daily dose taken by typical heroin addicts in Singapore; so, as a matter of common sense, the likelihood is that if it is being transported in such quantities this is for the purpose of trafficking. All that is suggested to the contrary is that there may be exceptional addicts whose daily consumption much exceeds the normal; but these abnormal addicts, if such there be, are protected by the fact that the inference that possession was for the purpose of trafficking is rebuttable.

In their Lordships' view there is no substance in the suggestion that section 15 is inconsistent with the Constitution, at any rate so far as it relates to proved possession, with which alone the instant cases are concerned.

Finally their Lordships will deal with the contention that the mandatory sentence of death upon conviction for trafficking in more than 15 grammes of diamorphine (heroin) is contrary to the Constitution. They can deal with it briefly. The death sentence was introduced by the amending Act of 1975. Prior to that, although heavy maximum and substantial minimum sentences were provided for, they were not made dependent on the quantity of drugs involved. In respect of three Class A drugs: opium and its derivatives morphine and diamorphine, and two Class B drugs, cannabis and cannabis resin, the amending Act substituted penalties for trafficking, importing and exporting that are graduated according to the quantity of the drug involved. Morphine and heroin alone attract the death penalty for manufacturing either of these drugs and for trafficking, importing or exporting them where the quantity involved in the case of morphine is 30 grammes or more and in the case of heroin is 15 grammes or more.

It was not suggested on behalf of the appellants that capital punishment is unconstitutional *per se*.

Such an argument is foreclosed by the recognition in Article 9(1) of the Constitution that a person may be deprived of life "in accordance with law". As their Lordships understood the argument presented to them on behalf of the appellants, it was that the mandatory nature of the sentence, in the case of an offence so broadly drawn as that of trafficking created by section 3 of the Drugs Act, rendered it arbitrary since it debarred the court in punishing offenders from discriminating between them according to their individual blameworthiness. This, it was contended, was arbitrary and not "in accordance with law" as their Lordships have construed that phrase in Article 9(1); alternatively it offends against the principle of equality before the law entrenched in the Constitution by Article 12(1), since it compels the court to condemn to the highest penalty of death an addict who has gratuitously supplied an addict friend with 15 grammes of heroin from his own private store, and to inflict a lesser punishment upon a professional dealer caught selling for distribution to many addicts a total of 14.99 grammes.

Their Lordships would emphasise that in their judicial capacity they are in no way concerned with arguments for or against capital punishment or its efficacy as a deterrent to so evil and profitable a crime as trafficking in addictive drugs. Whether there should be capital punishment in Singapore and, if so, for what offences are questions for the legislature of Singapore which, in the case of drugs offences, it has answered by section 29 and the Second Schedule of the Drugs Act. A primary object of imposing a death sentence for offences that society regards with particular abhorrence is that it should act as a deterrent; particularly where the offence is one that is committed for profit by an offender who is prepared to take a calculated risk. There is nothing unusual in a capital sentence being mandatory. Indeed its efficacy as a deterrent may be to some extent diminished if it is not. At common law all capital sentences were mandatory; under the Penal Code of Singapore the capital sentence for murder and for offences against the President's person still is. If it were valid the argument for the appellants would apply to every law which imposed a mandatory fixed or minimum penalty even where it was not capital — an extreme position which counsel was anxious to disclaim.

In order to dispose of the appellants' argument their Lordships do not find it necessary to embark upon a broad analysis of what the constitutional requirements of "equality before the law" and "the equal protection of the law" involve in contexts other than that of criminal laws which provide for mandatory penalties or mandatory limits upon penalties to be imposed upon the offenders convicted of particular crimes.

All criminal law involves the classification of individuals for the purposes of punishment, since it affects those individuals only in relation to whom there exists a defined set of circumstances — the conduct and, where relevant, the state of mind that constitute the ingredients of an offence. Equality before the law and equal protection of the law require that like should be compared with like. What Article 12(1) of the Constitution assures to the individual is the right to equal treatment with other individuals in similar circumstances. It prohibits laws which require that some individuals within a single class should be treated by way of punishment more harshly than others; it does not forbid discrimination in punitive treatment between one class of individuals and another class in relation to which there is some difference in the circumstances of the offence that has been committed.

The discrimination that the appellants challenge in the instant cases is discrimination between class and class: the imposition of a capital penalty upon that class of individuals who traffic in 15 grammes of heroin or more and the imposition of a penalty, severe though it may be, which is not capital upon that class of individuals who traffic in less than 15 grammes of heroin. The dissimilarity in circumstances between the two classes of individuals lies in the quantity of the drug that was involved in the offence.

The questions whether this dissimilarity in circumstances justifies any differentiation in the punishments imposed upon individuals who fall within one class and those who fall within the other, and, if so, what are the appropriate punishments for each class, are questions of social policy. Under the Constitution, which is based on the separation of powers, these are questions which it is the function of the legislature to decide, not that of the judiciary. Provided that the factor which the legislature adopts as constituting the dissimilarity in circumstances is not purely arbitrary but bears a reasonable relation to the social object of the law, there is no inconsistency with Article 12(1) of the Constitution.

The social object of the Drugs Act is to prevent the growth of drug addiction in Singapore by stamping out the illicit drug trade and, in particular, the trade in those most dangerously addictive drugs, heroin and morphine. The social evil caused by trafficking which the Drugs Act seeks to prevent is broadly proportional to the quantity of addictive drugs brought on to the illicit market. There is nothing unreasonable in the legislature's holding the view that an illicit dealer on the wholesale scale who operates near the apex of the distributive pyramid requires a stronger deterrent to his transactions and deserves more condign punishment than do dealers on a smaller scale who operate nearer the base of the pyramid. It is for the legislature to determine in the light of the information that is available to it about the structure of the illicit drug trade in Singapore, and the way in which it is carried on, where the appropriate quantitative boundary lies between these two classes of dealers. No plausible reason has been advanced for suggesting that fixing a boundary at transactions which involve 15 grammes of heroin or more is so low as to be purely arbitrary.

Wherever a criminal law provides for a mandatory sentence for an offence there is a possibility that there may be considerable variation in moral blameworthiness, despite the similarity in legal guilt of offenders upon whom the same mandatory sentence must be passed. In the case of murder, a crime that is often committed in the heat of passion, the likelihood of

this is very real; it is perhaps more theoretical than real in the case of large scale trafficking in drugs, a crime of which the motive is cold calculated greed. But Article 12(1) of the Constitution is not concerned with equal punitive treatment for equal moral blameworthiness; it is concerned with equal punitive treatment for similar legal guilt.

In their Lordships' view there is nothing unconstitutional in the provision for a mandatory death penalty for trafficking in significant quantities of heroin and morphine. The minimum quantity that attracts the death penalty is so high as to rule out the notion that it is the kind of crime that might be committed by a good samaritan out of the kindness of his heart as was suggested in the course of argument. But if by any chance it were to happen, the prerogative of mercy is available to mitigate the rigidity of the law and is the long-established constitutional way of doing so in Singapore as in England.

In the instant cases the law required that sentences of death should be imposed. There is no substance in the contention that this requirement of the law is inconsistent with the Constitution. The appeals must be dismissed.

Appeals dismissed.

Solicitors: *Kingsford Dorman; Jaques & Co.*

CHIN AH LOY v. ATTORNEY GENERAL

[P.C. (Lord Diplock, Lord Salmon, Lord Keith of Kinkel & Lord Scarman) July 28 & October 15, 1980]

[Privy Council Appeal No. 7 of 1979]

Landlord and Tenant — Tenancy period for a 3 year term with option to renew for a further three year period — Tenancy determinable by three months' notice in writing — Correspondence — Warranty that tenancy will be renewed if services provided and prices charged satisfactory — No evidence of unsatisfactory service or failure to comply with rules and regulations — Tenancy terminated by giving three months' notice — Damages for breach of contract.

In this case the applicant had successfully tendered for a duty-free shop at the Singapore Airport and he received a letter stating —

> "Your tenancy will commence on the 1st February 1972 for a period of 3 years with option for extension of 3 years subject to the D.C.A. being satisfied with the quality of the services provided and prices charged."

Subsequently a tenancy agreement was sent to the appellant which contained a clause that "either party may terminate the tenancy at any time by giving to the other three months' previous notice in writing."

The appellants wrote to the Director of Civil Aviation and in reply was told that the clause was a standard one and that if he observed the rules and regulations of the tenancy agreement, the "tenancy may be considered as secure for the period in question". Subsequently however the appellants were given three months' notice to vacate, so that in effect the tenancy was not renewed.

The appellant bought an action for damages for breach of contract. Choor Singh J. held that as it had been agreed that the tenancy was to be renewed for three years from February 1, 1975 on the same terms as those which applied to the first three years, the Government could not terminate the second term of three years unless the appellant had failed to comply with the rules and regulations of the tenancy agreement. As there was no evidence that the appellant had ever failed to do so, he gave judgment in favour of the appellant for damages assessed at $604.890. The Court of Appeal however allowed the appeal of the Attorney-General (see [1979] 1 M.L.J. 278) and the appellant appealed to the Privy Council.

Held: (1) one of the terms of the tenancy agreement was the warranty by the Government that it would not attempt to put into operation the clause relating to the giving of three months' notice of termination unless the tenant failed to carefully observe the rules and regulations of the agreement;

(2) as there was no evidence that the appellant had failed to observe the rules and regulations of the agreement, the learned trial judge was right in finding that there had been a breach of contract and in giving damages to the appellant.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Colin Ross-Munroe Q.C. (*Stephen Nathan* with him) for the appellant.

J.S. Colyer Q.C. (*Chao Hick Tin* with him) for the respondent.

Cur. Adv. Vult.

In the High Court, the following oral judgment was delivered on March 17, 1978 by:

Choor Singh J.: I find for the plaintiff. The evidence clearly shows that the Government of Singapore committed a breach of the tenancy agreement when they terminated the plaintiff's tenancy of the shop in question. I accept the plaintiff's evidence that if not for the assurance given by the Director of Civil Aviation in his letter of June 27, 1975, that so long as the plaintiff carefully observed "the rules and regulations" of the tenancy agreement he could consider his tenancy as secure for the period in question, he would not have entered into the said agreement. By giving this assurance the Director of Civil Aviation bound the Government of Singapore not to invoke the termination clause so long as the plaintiff carried out his obligations under the tenancy agreement. The effect of this assurance was that the Government of Singapore could invoke clause 4(i) of the agreement only when the plaintiff had committed some breach of the tenancy agreement.

The Government, having accepted the plaintiff's exercise of his option, the tenancy agreement was renewed and was in force for a further period of three years as from February 1, 1975 but on January 31, 1975 the Government purported to terminate the tenancy by invoking clause 4(i) and giving the plaintiff three months' notice. The tenancy was renewed with effect from February 1, 1975 on the same terms and conditions which applied to the first term of three years. This meant that the Government could terminate the second term of three years only when they found the plaintiff had committed some breach of the tenancy agreement. On January 31, 1975 when the Government purported to terminate the second term by invoking clause 4(i), the plaintiff had not committed any breach of the tenancy agreement. In fact the second term had not yet commenced. It commenced on February 1, 1975, but the notice to terminate the second term was given on January 31, 1975. The Government had no valid grounds at all to terminate the second term and dispossess the plaintiff. In my judgment, on the factual evidence in this case, which is not in dispute, the plaintiff is entitled to damages for the loss suffered by him for not being allowed to operate his shop for a period of 2 years and 9 months.